IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 712 of 1998

with

SPECIAL CIVIL APPLICATION No 7777 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMADYUNUS A CONTRACTOR

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 712 of 1998
   MR MUKESH H RATHOD for Petitioner No. 1
   MR PRADIP D BHATE A.G.P. for Respondent No. 1
2. Special Civil Application No. 7777 of 1997
   M/S PATEL ADVOCATES for Petitioner No. 1
   MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/01/2004

ORAL JUDGEMENT

Both these petitions arise from the same judgment and award which are passed by the Labour Court, Baroda in Reference (L.C.V.) No. 904 of 1996 (old No. 657 of 1989) dated 18th March, 1997.

2. The facts of the case in nutshell can be stated as under :-

2.1. Petitioner of Special Civil Application No. 712 of 1998 and Respondent in Special Civil Application No. 7777 of 1997 (hereinafter referred to as "the workman") was appointed in the office of the petitioner in Special Civil Application No.7777 of 1997 (hereinafter referred to as "the employer") as clerk-cum-typist from 15th October, 1982. The workman was given appointment for a period not exceeding one month. However, it was his contention that break given to him was of artificial nature and that he was required to do the duty of permanent nature. it appears that his service was terminated by the employer with effect from 1st December, 1985. At the time of termination of service, no notice pay and retrenchment of compensation was paid to him and the service was terminated without following the provisions of Section 25 (F) and (G) of the Industrial Disputes Act, 1947.

2.2. The order of termination became the subject matter of Reference which was made under the provisions of Section 10 (1) (C) of the Industrial Disputes Act. The Labour Court passed exparte award on 22nd March, 1991 which subsequently came to be challenged by the employer in Special Civil Application No. 464 of 1992 before this Court. This Court accepted the petition and quashed and set aside the exparte award on 16th February, 1995 and remanded the matter back to the Labour Court for retrial with a direction that during the pendency of the proceedings, the workman be paid his last drawn wages every month by 7th of the succeeding month.

2.3. At the hearing of the proceedings before the Labour Court, same contentions were raised by the workman to the effect that he was appointed on regular basis, but he was being given appointment for a period not exceeding one month and artificial breaks were being given at regular intervals. He had further averred that on 1st December, 1985 without any reasons his service was terminated by the employer, since he had raised a demand

to grant him all the benefits which were being granted to the permanent employee. He, therefore, prayed for relief of reinstatement with full backwages and all other incidental benefits.

2.4. The employer contested the said claim by filing reply at Exh.13 wherein, it was stated that the workman was appointed on ad hoc basis till the regular employee on the said post was available and, therefore, he was not a "workman" as defined under the provisions of the Industrial Disputes Act. It was further averred that since there was heavy work, appointment was made, but the same was purely on temporary basis. It was further averred that since the appointment was on temporary basis, there was no need for the employer to issue notice before terminating his service or to follow the procedure under Section 25 (F) of the Industrial Disputes Act. It was, therefore, prayed that Reference be dismissed.

3. The Labour Court on the basis of the material that was produced before it, documentary as well as by way of oral evidence, ultimately came to the conclusion that the order of termination of the service was bad in law as the procedure under Section 25 (F) was not followed and the same was required to be complied with since the workman had rendered continuous service for more than 240 days. The Labour Court came to the conclusion that the employer was an "Industry" requiring to adhere to the provision of the Industrial Disputes Act. The Labour Court, therefore, quashed and set aside the order terminating the service of the workman and directed the employer to reinstate him on his original post with continuity of service. However, in view of the fact that he was being paid salary on the basis of the last drawn wages as per the direction of this Court, the Labour Court did not think it fit to award backwages.

4. It is this award which is now under challenge before this Court by way of present petitions which have been filed by the workman as well as the employer.

5. The workman has filed Special Civil Application No. 712 of 1998 challenging the denial of backwages to him.

6. At the hearing, Mr.Pradip Bhate learned A.G.P. submitted that the judgment and award of the Labour Court are erroneous because the workman was appointed purely on temporary and ad hoc post and he could be relieved from the service without issuing any notice or following any procedure. He has further submitted that the petitioner

is a department of the Government which is not an 'Industry' and the present Reference is, therefore, not maintainable.

5.1. As against that, Mr.Rathod learned advocate appearing for the workman has submitted that the judgment and award directing the employer to reinstate the workman with continuity of service and payment of Rs.250=00 towards the expenditure of the litigation is just and proper. He has further submitted that considering the facts and circumstances of the case, the Labour Court ought to have awarded the backwages. Lastly, he has submitted that the petition of the Government had no merit and it deserved to be dismissed and his petition was required to be allowed.

6. Having gone through the record of both the petitions, and having considered the submission made by the learned advocates, it appears that though the workman was being appointed for a period not exceeding one month, artificial breaks were given in each month. It is clear that the breaks were artificial breaks and they were being given only with a view to avoid any liability that may arise under the provisions of Industrial Disputes Act. Practice of giving such artificial breaks is often deprecated not only by this Court but by other High Courts and Apex Court also. The law is very well settled on this aspect. The Labour Court is, therefore right, when it came to the conclusion that such artificial breaks cannot be taken into consideration to determine the issue with regard to the continuous service of concerned workman. In the present case, the workman had rendered service to the employer for a period between 15th October, 1982 and 1st December, 1985 i.e. almost for three years and two months. If that be so, and if it is found by the Labour Court that he had rendered service for a period for more than 240 days, the finding appears to be absolutely just and proper and it does not call for any interference by this Court. The second aspect has also been duly considered by the Labour Court with regard to maintainability of the Reference under the Industrial Disputes Act vis-a-vis the submissions regarding the employer being Government department was not an Industry. While doing so, the Labour Court had taken into consideration several decisions of the different Courts, details of which have been duly stated in paragraph 7 of the judgment. In view of the aforesaid, conclusion reached by the Labour Court that the order of dismissal passed against the workman was illegal and was required to be quashed and set aside, is absolutely just and proper.

6.1. It is also brought to my notice that by virtue of the order dated 9th March, 1998 passed by this Court (Coram : K.R. Vyas, J.) in Civil Application No. 2306 of 1998, the workman has been reinstated in service in accordance with the direction given by the Labour Court and he is being paid salary in accordance with the said order. The learned advocate appearing for the workman is directed to supply a copy of the said order and the same is ordered to be taken on the record. In view thereof, the Government's petition even otherwise has become infructuous.

7. The next question that arise for consideration is whether denial of backwages to the workman by the Labour Court is proper. The Labour Court while doing so has taken into consideration the fact that by virtue of this Courts order, the workman had received wages during the pendency of the proceedings, which was Rs.750 to 800 per month. Since he was being appointed as daily wager, the aforesaid amount takes care of the wages and no further benefit was required to be granted. The conclusion reached by the Labour Court on this aspect appears to be just and proper and I am not inclined to disturb this order.

Both these petitions have no merit and they deserve to be dismissed and they are hereby ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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